

Chauffeurs, Teamsters and Helpers, Local Union No. 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Fugate and Girton Driveaway, Inc.] and Earl A. DeHart and R. Harold Richardson. *Cases Nos. 13-CB-1185-1 and 13-CB-1185-2. April 24, 1963*

DECISION AND ORDER

On November 8, 1962, Trial Examiner Owsley Vose issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Union had not engaged in certain unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief and the Respondent Union filed a brief in support of the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, and the entire record in the case, including the exceptions and briefs, and hereby adopts the findings, conclusions,¹ and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

¹ We agree with the Trial Examiner that (1) the Respondent Union did not cause or attempt to cause the Employer herein to discriminate against the Charging Parties in violation of Section 8(b)(2) of the Act and (2) under the circumstances of this case, the Respondent Union's failure to represent the Charging Parties in the grievance procedure was not violative of Section 8(b)(1)(A) of the Act. However, we find it unnecessary in the disposition of this case to pass upon the Trial Examiner's conclusions that the grievance procedures in the truckaway agreements culminate in binding arbitration, that such procedures are fair, and that by the terms of such procedures specified in said agreements the Respondent Union was relieved of any obligation to represent the Charging Parties. Nor do we reach the Trial Examiner's further conclusion that the scheme of representation embodied in the Act rules out dual representation.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges filed by Earl A. DeHart and R. Harold Richardson on March 5, 1962, the General Counsel, on June 1, 1962, issued a complaint against the Respondent Chauffeurs, Teamsters and Helpers, Local Union No. 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 414, alleging that it had violated Section 8(b)(2) and 8(b)(1)(A) of the National Labor Relations Act. Local 414 filed an answer denying the unfair labor practice allegations of the complaint. The case was heard by Trial Examiner Owsley Vose on August 7 and 8, 1962, at Fort Wayne, Indiana. The General Counsel and the Respondent Local 414 appeared and were represented at the hearing, were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and

to present oral argument. The General Counsel and the Respondent filed briefs which have been fully considered.¹

Upon the entire record and my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTIONAL FINDINGS

Fugate and Girton Driveaway, Inc., an Indiana corporation, is engaged at Fort Wayne, Indiana, and Springfield, Ohio, in the business of transporting for others motor vehicles, usually new trucks, by the so-called truckaway and driveaway systems. Under the truckaway system, the vehicles being transported are carried on Fugate and Girton's trailers which are pulled by tractors owned by drivers in Fugate and Girton's employ. Under the driveaway system, Fugate and Girton furnishes drivers to deliver vehicles (either one or more vehicles in combination) to their destination using the power of one of the vehicles being transported. In the course of its business in 1961, Fugate and Girton performed services for others in States other than Indiana and Ohio which were valued in excess of \$1,000,000. I find that Fugate and Girton is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, as the Respondent Local 414 admits, and that it will effectuate the policies of the Act to assert jurisdiction herein

II. THE LABOR ORGANIZATION INVOLVED

The Respondent Local 414 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Issues involved

The issues raised by the consolidated complaint and litigated at the hearing are (1) whether Local 414 utilized the grievance procedure established under its collective-bargaining contract with Fugate and Girton to cause that concern to lay off two of the latter's truckaway drivers, Richardson and DeHart, in violation of Section 8(a)(3) of the Act, thereby violating Section 8(b)(2), and (2) whether Local 414 violated Section 8(b)(1)(A) of the Act by failing fairly to represent Richardson and DeHart in grievance proceedings which were held pursuant to the contract. Richardson and DeHart suffered a loss of 3 months' employment by Fugate and Girton (from September 26 to December 27, 1961), while grievance proceedings were pending before the Automobile Transporters Joint Conference Committee, pursuant to the grievance provisions of the contract.

B. Background

1. The Automobile Carrier Truckaway Agreement

On March 1, 1961, the National Truckaway and Driveaway Conference of the International Brotherhood of Teamsters, for the employees, and the Automobile Transporters Labor Division, for the employers engaged in truckaway and driveaway operations, entered into the "Automobile Carrier Truckaway Agreement." The agreement has a 3-year term. This is a nationwide agreement covering all the employees of organized truckaway and driveaway carriers. After the national agreement was reached by the negotiating committees, the various carriers represented by the Automobile Transporters Labor Division signed individual contracts with each of the various Teamsters locals representing their employees. These were uniform contracts in the terms of the Automobile Carrier Truckaway Agreement. Fugate and Girton signed one contract with Local 414 covering its Fort Wayne, Indiana, drivers, and another in identical terms with Local 654 covering its Springfield, Ohio, drivers.

These contracts (article 4, section 1) provide that employees longest in the service of the employer shall be retained in case of a reduction in force, and that terminal seniority shall prevail at all times, with the exception noted immediately below. Where a new operation is begun, the contracts (article 4, section 6) provide that the employer shall offer affected employees the opportunity to transfer to the

¹ Subsequent to the hearing the General Counsel filed a "motion for certain corrections to the record." No opposition having been filed thereto, the General Counsel's motion is hereby granted and the record is corrected accordingly.

new operation and that in this special situation the employees' companywide seniority governs (article 4, section 6(a)(1)).

The contracts further provide that seniority lists shall be kept posted at all times and that controversies over employees' seniority standings shall be disposed of under the grievance procedure prescribed in the contracts (article 4, section 1). The grievance procedure culminates in arbitration which is binding on all parties to the contracts (article 7, section 2(c)).

The undisputed evidence establishes that these seniority lists are posted at the employees' base terminal and that employees acquire seniority only at their base terminal regardless of the fact that they may temporarily work out of another terminal. It is also undisputed that under the practice which has grown up under the contracts, no seniority rights are acquired at terminals away from their base terminal at which employees may be temporarily assigned.

The practice under the contracts in dispatching truckaway drivers from Fugate and Girton's terminals at Fort Wayne and Springfield is to dispatch the regular drivers appearing on the seniority lists for each of these terminals on a first in and first out basis regardless of their seniority. However, drivers temporarily assigned to a terminal other than their home terminal are assigned runs only after all the regular drivers holding seniority at that terminal have been given runs. In other words, they are given the extra or leftover work only.

2. Richardson's and DeHart's seniority status at Fugate and Girton

The Charging Parties, Richardson and DeHart, were truckaway drivers at Fugate and Girton's Springfield, Ohio, terminal when the events under consideration in this case began. They were both members of the Springfield Local 654. Richardson was the No. 1 man on the Springfield truckaway seniority list. DeHart was the No. 5 man on the list. There were six drivers on the Springfield truckaway seniority list at this time. Under the contracts, Richardson and DeHart could not be permanently assigned away from their Springfield base terminal without their consent. As long as Fugate and Girton had work for five truckaway drivers at Springfield, Richardson and DeHart were both entitled to insist on working out of Springfield, and it was Fugate and Girton's obligation to do the modification work on their tractors, if any were necessary, to provide work for them. As long as there was work for one truckaway driver at Springfield, Richardson, as the No. 1 man, was entitled to claim this work. And DeHart, if there was not sufficient work available for five drivers at Springfield, could elect to go on layoff status at Springfield rather than be assigned elsewhere against his will.

3. Fugate and Girton's establishment of a new truckaway operation at Fort Wayne

Prior to January 1961, Fugate and Girton conducted only driveway operations from its Fort Wayne terminal. In 1960 International Harvester Company, one of Fugate and Girton's principal shippers, commenced manufacturing at its plant at Fort Wayne a "Jeep" type vehicle called the "Scout" of a kind it had not previously made. International Harvester Company made arrangements with Fugate and Girton to handle the shipments of Scouts to International Harvester dealers out of its Fort Wayne terminal. Because of the newness of the Scout there was uncertainty all around as to the reception it would receive from the purchasing public. Consequently when Fugate and Girton initially made plans to haul the Scouts it was anticipated that four trailers could take care of the volume of business which would be available. It was also believed that after the initial supplying of dealers with vehicles, not even four drivers would be kept busy hauling Scouts. This is the credited testimony of John R. Cassidy, the president of Fugate and Girton. Special trailers capable of carrying seven Scouts had to be procured to haul the Scouts, and because of the expense and the uncertainty as to the amount of work involved, President Cassidy did not want to obtain any more seven-car trailers than were absolutely necessary.

In October 1960 Fugate and Girton hired Larry Taylor and Archie Meade at the Springfield, Ohio, terminal, for the Scout operation which had not yet begun. They purchased tractors and worked at the Springfield terminal while awaiting the commencement of Scout shipments. These began about January 1, 1961, and Meade and Taylor started hauling Scouts out of Fort Wayne at this time as the No. 1 and No. 2 men at that terminal.

To round out the complement of four drivers which he anticipated would be needed to take care of the initial stocking of dealers with Scouts, President Cassidy assigned the Charging Parties, Richardson and DeHart, to the Fort Wayne terminal

on a temporary basis. Cassidy selected Richardson and DeHart because their tractors were suitable for hauling the seven-car trailers used at Fort Wayne and would have had to be modified before they could be used on the five-car operations which shippers at the Springfield terminal were beginning to demand. The trailers which Richardson and DeHart had been hauling out of Springfield were four-car trailers. Cassidy told Richardson and DeHart at the time of this assignment that they would be hauling out of both the Fort Wayne and the Springfield terminals. Cassidy, as he admitted, contemplated at the time he assigned Richardson and DeHart to Springfield that he would be calling the two men back to Springfield after the initial rush of deliveries at Fort Wayne had been taken care of.

4. The expansion of Fugate and Girton's Scout operation at Fort Wayne

The demand for Scouts was greater than originally anticipated and required Fugate and Girton to expand its Fort Wayne truckaway operation. In February 1961, President Cassidy called Ben Taylor, who had previously worked for Fugate and Girton, and sought to persuade him to buy a tractor and go to work for the Company at Fort Wayne. Cassidy told Taylor that Larry Taylor and Meade were "doing real well" and that he would be the No. 3 man at Fort Wayne if he decided to come back to work for the Company. Cassidy explained that he had Richardson and DeHart working in Fort Wayne on a temporary basis and that they would be sent back to Springfield after the rush was over. Ben Taylor decided to accept Cassidy's offer and went to work on February 15, 1961. He joined the Springfield Local not long after being hired. During March 1961 Fugate and Girton hired four additional drivers for the Fort Wayne truckaway operation. They were all hired at Springfield and joined the Springfield Local. According to Ben Taylor, they were all hired with the same understanding as to the temporary nature of Richardson's and DeHart's assignment to Fort Wayne as Ben Taylor was given. Like Ben Taylor, some of them had to buy tractors in order to go to work.

The volume of Scout hauling to be done at Fort Wayne so exceeded previous expectations that Richardson was not sent back to Springfield at all during the spring and summer of 1961, with the exception noted below. DeHart was sent back to Springfield on January 8, 1961, but was returned to Fort Wayne on January 24, and continued to pull loads out of that terminal for the rest of the spring and summer of 1961, subject to the interruption discussed below.

5. Events in the pre-Section 10(b) period

Although Section 10(b) of the Act precludes the basing of unfair labor practice findings upon conduct occurring more than 6 months prior to the filing and service of the charge, the General Counsel offered, and I received, evidence of events occurring in the period preceding September 6, 1961 (the charges in this case were filed on March 5, 1962), because such events are relevant in appraising Local 414's conduct within the 6-month period.

a. Local 414 demands that the Fort Wayne based drivers transfer from the Springfield Local

In March and April 1961, the drivers at Fort Wayne were told by Fort Wayne Local 414 Business Agent Harold Schutte and Alternate Steward Ivan Spitsnaugle that they would have to transfer from Springfield Local 654 to Fort Wayne Local 414 if they wanted to pull another load out of Fort Wayne. When DeHart asked Spitsnaugle whether this applied to Richardson and himself, Spitsnaugle replied that they were up here "as extra help and didn't have to transfer."

Early in April, five of the Fort Wayne drivers transferred to Fort Wayne Local 414, and later on the two remaining regular Fort Wayne drivers transferred. Richardson and DeHart did not transfer at any time.

b. Local 414 insists that Richardson and DeHart be returned to Springfield and that they be given extra work only in Fort Wayne

In July 1961 the volume of Scouts to be transported dropped off considerably and the drivers in Fort Wayne had to wait a week or more between loads. Ben Taylor, the No. 3 man on the Fort Wayne truckaway seniority list, asked Fort Wayne Local 414 Steward James Howey to find out from Fugate and Girton when Richardson and DeHart were going to be sent back to Springfield. Howey spoke to William Grant, terminal manager at Fort Wayne for Fugate and Girton, about the matter. Grant said he would find out and let Howey know. Subsequently Grant informed

Howey that Richardson and DeHart were not going to be sent back to Springfield, that Fugate and Girton had a considerable sum of money invested in the trailers which Richardson and DeHart were hauling and that Richardson and DeHart were not going to be sent back to Springfield until these trailers were paid for.

After receiving this information about July 31, 1961, Local 414 Alternate Steward Spitsnaugle and Business Agent Messmore both informed Terminal Manager Grant that Richardson and DeHart were only to be given the extra or overflow runs, that the Fort Wayne based drivers were to be used first. When Grant informed Richardson and DeHart that Local 414 would not let him give them a load, and that they would have to return to Springfield, DeHart asked Spitsnaugle why Local 414 would not permit them to load. Spitsnaugle's reply was that the two men were only in Fort Wayne temporarily, that there was only enough work for his men, and that they would have to return to Springfield. It happened that at that time there were three loads ready for departure from the terminal and there were only two of the Fort Wayne based drivers available. DeHart requested Grant to give him this third load. Terminal Manager Grant, after calling the union hall, assigned DeHart this load.

c. President Cassidy refuses to order the return of Richardson and DeHart to Springfield and takes the position that they are the No. 3 and No. 4 drivers at Fort Wayne; Local 414 acquiesces in this position

After completing his delivery DeHart returned to Springfield about August 2 or 3, and spoke to Cassidy, the president of Fugate and Girton. Richardson talked to Cassidy about this same time. They told Cassidy that they had been informed that only extra work was available for them in Fort Wayne. Up until this time Richardson and DeHart had been sharing work with the Fort Wayne based drivers, all of whom were members of Local 414, on a first in and first out basis. Cassidy told them there was no work for them in Springfield,² that they had been in Fort Wayne too long to come back to Springfield and claim their seniority there. After calling Albert D. Matheson, the secretary of the Automobile Transporters Joint Conference Committee, the top tribunal provided for in the grievance provisions of the contracts to hear grievance matters, Cassidy instructed Richardson and DeHart that they were to return to Fort Wayne in the No. 3 and No. 4 positions, respectively.

As indicated above, Fugate and Girton's seniority lists posted throughout this entire period, including the list dated August 1, 1961, carry Richardson and DeHart in the No. 1 and No. 5 positions on the Springfield list, and carry Ben Taylor and Luther Blue in the No. 3 and No. 4 positions on the Fort Wayne list. At no time thereafter did the names of Richardson and DeHart ever appear on the Fort Wayne seniority list.

Richardson called James Feltis, the secretary-treasurer of Springfield Local 654, of which he was a member, for advice. As a result of receiving this call, Feltis called Cassidy and inquired about the seniority status of the two men. Cassidy informed Feltis that originally Richardson and DeHart had been sent over to Fort Wayne as temporary help on the Scout operation, but that they had been there so long they now had permanent status there so far as Fugate and Girton were concerned.

Subsequently, both Richardson and DeHart went to see Feltis. He told them that there were rumors of a grievance being filed if they returned and claimed their Springfield seniority, said that they had been in Fort Wayne too long to hold their seniority in Springfield, and confirmed Cassidy's instructions to them to return to Fort Wayne in the No. 3 and No. 4 positions. Feltis added that he would call Matheson, the secretary of the Automobile Transporters Joint Conference Committee in Detroit.

Richardson and DeHart returned to Fort Wayne about August 4, 1961, pursuant to President Cassidy's instructions. They talked with Local 414 Business Agent Schutte at the terminal in the presence of Steward Howey and Dispatcher Elwin McKenzie. Richardson explained the understanding pursuant to which he had returned to Fort Wayne, namely, that if any problem arose out of his assuming the No. 3 position at Fort Wayne, that it would be disposed of under the grievance procedure provided in the contract. Richardson added that if Schutte had any question about his returning to work in the No. 3 position, Schutte was to call Matheson in Detroit.

² Cassidy later sought to explain his position in this regard by stating that by this time the shippers out of Springfield were demanding that five-car trailers be used (Richardson and DeHart had previously hauled four-car trailers) and that Richardson's and DeHart's tractors were not readily convertible to five-car trailer hauling.

After Richardson gave Schutte Matheson's telephone number in Detroit, Schutte left to call Matheson. According to Richardson's credited testimony, when Schutte returned after making the call Schutte stated as follows: ". . . this is straight from the horse's mouth, 'Richardson will be No. 3 and DeHart No. 4,' and you go down and get your ass to the Union Hall and transfer and tell DeHart to do the same thing." Richardson assented, but before he had a chance to do so McKenzie told him that there was a load to be taken out immediately. When Richardson returned several days later after delivering this load, he was advised by Alternate Steward Spitsnaugle and Dispatcher McKenzie not to be in any hurry about transferring, as a grievance had been filed. A few days thereafter, Schutte told DeHart that he was going to have to transfer to Local 414 but to wait until the grievance was settled before doing so.

Thereafter, until the Local Joint Committee rendered its decision on September 26, 1961, Richardson and DeHart continued to share the work at the Fort Wayne terminal with the regular Fort Wayne truckaway drivers. They have not at any time transferred to Fort Wayne Local 414.

C. Events during the 6-month period prior to the filing of the charges herein

1. The proceedings before the Fort Wayne Local Joint Committee

The first event occurring within the 6-month Section 10(b) period was the hearing of the Fort Wayne Local Joint Committee on September 26. This hearing was held to consider the formal written grievance filed by Ben Taylor on August 8, 1961. In this grievance, Taylor, in effect, alleged that he had been assured by President Cassidy when he was hired for the Fort Wayne operation that he would be the No. 3 man at Fort Wayne, and that Fugate and Girton's assignment of Richardson and DeHart to permanent positions as Nos. 3 and 4 drivers at Fort Wayne prejudicially affected his seniority rights and caused him to suffer the loss of employment which he otherwise would have had.

The Local Joint Committee in Fort Wayne consisted of two officials from Local 414 and the representatives of two trucking concerns having terminals in Fort Wayne. This panel heard Terminal Manager Grant, representing Fugate and Girton, suggest that in view of the length of time Richardson and DeHart had been in Fort Wayne, they were entitled to the No. 3 and No. 4 positions in Fort Wayne. However, Grant stated that Fugate and Girton was somewhat in a quandary about this matter and desired the panel to make a determination. Local 414 Business Agent Schutte presented the case for Taylor who had filed the grievance. Schutte pointed out that business had fallen off in Fort Wayne and there was not enough work to keep all the men busy; consequently he requested that Richardson and DeHart, whom he asserted were in Fort Wayne on a temporary basis, be returned to Springfield where they still had their original seniority standings. Schutte also called the attention of the panel to the fact that Richardson's and DeHart's names had not appeared on the Fort Wayne seniority list, that they had not questioned the absence of their names from the Fort Wayne list, and that Richardson and DeHart had been given an opportunity to transfer to the Fort Wayne Local and had refused to do so, and accordingly should only be given extra work at Fort Wayne.³ It is this last statement of Schutte at this panel hearing upon which the General Counsel mainly relies as establishing Local 414's illegal motives in utilizing the grievance procedure to oust Richardson and DeHart from jobs at Fort Wayne.

DeHart and Richardson were not notified of the hearing before the Local Joint Committee and did not participate therein. All parties participating in the proceeding had interest adverse to Richardson's and DeHart's continued working in Fort Wayne on a regular basis.

The panel of the Local Joint Committee after considering the matter unanimously decided to uphold the position of Local 414, as follows:

SEPT. 26, 1961.

Union position that Earl DeHart & Robert Richardson have no seniority at the Ft. Wayne terminal & the 2 drivers are still carried on the Springfield seniority list therefore they have no seniority in Ft. Wayne, Ind. & will pull extra loads only after the Ft. Wayne domiciled drivers are working. There is no back pay involved.

³ In this connection Schutte explained at the hearing that under the reciprocity understanding with other locals, when a member of our local transferred permanently from one terminal to another, he joined the local having jurisdiction over the new terminal.

2. Fugate and Girton's refusal to put Richardson and DeHart to work at Springfield on September 27

Terminal Manager Grant promptly notified Richardson and DeHart of the decision of the Fort Wayne Local Joint Committee, telling them that the Committee had voted away their seniority. They were never shown a copy of the Committee's decision. Richardson and DeHart returned to Springfield and reported for work at the Fugate and Girton terminal. President Cassidy told them that they "worked in Fort Wayne" and that he had no work at Springfield for four-car trailers of the kind their tractors had previously hauled. As a result the two men lost 3 months' work.

Richardson and DeHart also informed Business Agent Feltis of Springfield Local 654, of which they were members, that the Committee had voted away their seniority in Fort Wayne. Feltis, apparently regarding the decision of the Fort Wayne Local Joint Committee as holding that DeHart and Richardson were entitled to their original seniority at Springfield, promptly announced as follows: "I'm not going to let them get away with that, you have no right to appeal but I can and I will. This thing was supposed to have gone to Detroit for a settlement and I'm going to take it up there."

3. The proceedings of the Automobile Transporters Joint Conference Committee at Detroit

As he had announced, Feltis instituted proceedings before the Joint Conference Committee at Detroit which would in effect review the decision of the Fort Wayne Local Joint Committee. The case was heard October 18, 1961. Feltis notified DeHart of the date of the hearing. When DeHart questioned Feltis as to whether it would be necessary for Richardson and him to be at the hearing, Feltis answered, "No," that he was going to represent them. Consequently they did not attend the hearing in this proceeding either.

At the hearing Feltis took the position that Richardson and DeHart belonged on the Fort Wayne seniority list pointing out that they had been in Fort Wayne a sufficient length of time and had not pulled any loads out of Springfield since February 1961. Business Agent Messmore argued on behalf of Local 414 that Richardson and DeHart were in Fort Wayne on a temporary basis and that as extra drivers handling overflow work on a temporary basis they were not entitled to accumulate seniority at Fort Wayne under the reciprocity agreements between locals. Cassidy, on behalf of Fugate and Girton, took a neutral position regarding the matter.

One of the questions considered by the Joint Conference Committee was whether Richardson and DeHart had been asked to join Fort Wayne Local 414 and had refused. Messmore argued for Local 414 that the two men had refused to transfer to Local 414. The General Counsel relies on Messmore's argument in this regard as further supporting his case against Local 414.

The Joint Conference Committee decided as follows:

By unanimous vote the Committee held that, if after further investigation by a Subcommittee, it is found that the two drivers had an opportunity to transfer to Ft. Wayne as regular employees and refused same because they wanted to remain on the Springfield, Ohio Terminal Seniority Board, then, in such case, they should continue holding terminal seniority only at the Springfield, Ohio Terminal. However, if they were offered no opportunity, then in such case they will hold terminal seniority on the Ft. Wayne Seniority Board back to the date which they commenced work in Ft. Wayne.

4. The subcommittee hearing in Fort Wayne on November 8

Pursuant to the decision of the Joint Conference Committee, a two-man subcommittee, consisting of Steve Kearns, business representative of South Bend Teamsters Local 364, and Ward Barnum, the Fort Wayne terminal manager for Howard Sober, Inc., met on November 8, 1961. Barnum is the same individual who was one of the employer representatives on the Fort Wayne Local Joint Committee which passed on Taylor's grievance in the first instance. Richardson and DeHart were present at the hearing before the subcommittee. This was the first time in the course of the various proceedings that they were given an opportunity to be heard.

It is difficult to determine whether the subcommittee actually addressed itself to the question before it for decision, i.e., whether Richardson and DeHart had been given an opportunity by Fugate and Girton to transfer to Fort Wayne and refused because they wanted to retain their seniority at the Springfield terminal. According to the testimony of the employer representative this question was explored. But the

testimony of the Teamsters representatives indicated that their concern at this hearing was with the question whether Richardson and DeHart had been asked to join the Fort Wayne Local and had refused to do so. Representatives of Local 414 contended that they had. Richardson denied this, asserting that he was a Springfield driver. Many of the facts brought out at the previous hearings, including the fact that the two men had originally been sent over to Fort Wayne on a temporary basis, and that they had remained on the Springfield seniority list throughout and had never been placed on the Fort Wayne list, were again brought out. The employer and union representatives each sent separate reports to the Joint Conference Committee recommending that Richardson and DeHart be placed at the bottom of the Fort Wayne seniority list.

The Automobile Transporters Joint Conference Committee, to which the reports of the subcommittee were submitted, decided that Richardson and DeHart had had an opportunity to transfer to Fort Wayne as regular drivers and refused because they desired to retain their seniority standings at Springfield. In accordance with this decision, Matheson, the secretary of the Joint Conference Committee at Detroit, on December 8, 1961, notified President Cassidy of Fugate and Girton that Richardson and DeHart should "continue to hold terminal seniority on the Springfield, Ohio, Terminal Seniority Board as of their original date of hire."

On December 27, 1961, Richardson and DeHart were reinstated by Fugate and Girton. Their tractors had in the meantime been modified so as to be able to haul the trailers which were then being used. By this time they had been out of work for 3 months.

D. Conclusion concerning Local 414's alleged violation of Section 8(b)(2)

Section 8(b)(2) of the Act makes it an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection 8(a)(3)" Section 8(a)(3) makes it unlawful for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

The essential facts in the case may be summarized as follows. President Cassidy of Fugate and Girton assigned Richardson and DeHart, the No. 1 and No. 5 drivers at the Springfield terminal, to the Fort Wayne terminal in January 1961, on a temporary or extra basis. When Cassidy hired Ben Taylor in February 1961,¹ he assured Taylor that he had the No. 3 seniority position at Fort Wayne. Under the contract between Local 414 and Fugate and Girton and the practice thereunder, Richardson and DeHart, as temporary or extra help at Fort Wayne, did not accumulate seniority at Fort Wayne but continued to hold their original seniority standings at Springfield. When Local 414 requested the drivers hired for work at the Fort Wayne terminal to transfer from the Springfield Local to it in April or May 1961, Richardson and DeHart were excluded from this request because they were extra or temporary help at Fort Wayne and subject to being recalled to Springfield when the rush of work was over.

Although Richardson and DeHart at no time transferred to Fort Wayne Local 414, they continued to pull loads on an equal basis with the Fort Wayne domiciled drivers until September 26, 1961. Only once did Local 414 make attempts to exclude Richardson and DeHart from the regular driving work at Fort Wayne. This was on July 31, 1961, prior to the commencement of the 6-month Section 10(b) period herein, when Local 414 sought, as it was entitled to do under the contract where temporary or extra drivers were involved and there was not enough work to go around, to have Richardson and DeHart returned to their home terminal at Springfield. On this occasion Local 414 yielded when Fugate and Girton took the position that Richardson and DeHart were entitled to the No. 3 and No. 4 positions at Fort Wayne. This was the first time that Fugate and Girton took any action even purporting to change the status of Richardson and DeHart. Up until this time their status was that of the No. 1 and No. 5 drivers at Springfield temporarily assigned to Fort Wayne.

When on July 31 President Cassidy announced that Richardson and DeHart were to be the No. 3 and No. 4 men at Fort Wayne, he did so with the understanding, made after consultation with the secretary of the Automobile Transporters Joint Conference Committee at Detroit, that if a grievance were filed it would be disposed of under the contractual grievance procedure. Cassidy was the moving party in making this arrangement. Local 414 acquiesced in his making it, and also in the understanding that any grievances arising therefrom would be settled by the Joint Conference Committee at Detroit.

The grievance proceeding was initiated, not by Local 414, but by Ben Taylor who, in my opinion, had a legitimate complaint that his contractual seniority rights were being violated. Both Local 414 and Fugate and Girton were contractually obligated to process Taylor's grievance.

It is the processing of Taylor's grievance by Local 414 which the General Counsel contends amounted to a violation of Section 8(b)(2) of the Act. The General Counsel's theory is that Local 414 utilized the contractual grievance procedure in an effort to cause Fugate and Girton to deprive Richardson and DeHart to work at the Fort Wayne terminal because they had refused to transfer their membership from Springfield Local 654 to Fort Wayne Local 414.

As the summary of facts above set forth discloses, the facts of the case do not bear out the General Counsel's theory. Local 414 in processing Taylor's grievance to a conclusion was merely attempting to require Fugate and Girton to live up to its obligations under the collective-bargaining contract. Ben Taylor was the No. 3 man on the seniority list posted at Fort Wayne. Fugate and Girton, by ousting Ben Taylor from his No. 3 seniority position at Fort Wayne and placing Richardson and DeHart, neither of whom had any seniority standing at Fort Wayne, in the No. 3 and No. 4 positions at Fort Wayne violated the seniority rights of Taylor and the other drivers below him on the Fort Wayne seniority list.

Local 414 in processing Taylor's grievance was not motivated, as the General Counsel contends, by antagonism towards Richardson and DeHart for failing to transfer to it. In recognition of their temporary status in Fort Wayne, Local 414 had expressly informed Richardson and DeHart that they need not transfer because of their temporary status at Fort Wayne. Throughout this controversy Local 414 has been motivated by a desire to protect the contractual seniority rights of the Fort Wayne drivers which it believed were being violated by Fugate and Girton's insistence that Richardson and DeHart were the No. 3 and No. 4 men at Fort Wayne. This action prejudicially affected the seniority rights of the last five drivers who were hired by Fugate and Girton for the specific purpose of working at the Fort Wayne terminal. In other words, the controversy here was essentially one between Local 414 and Fugate and Girton over seniority rights, and the nonmembership of Richardson and DeHart was not a significant factor therein.

In my opinion, the General Counsel has not only failed to show that Local 414 was motivated by prohibited considerations in processing Taylor's grievance, but also he has failed to establish that Local 414 was the moving party in the events here involved. Hence, it cannot reasonably be concluded that Local 414 "caused" or "attempted to cause" Fugate and Girton to take action in violation of Section 8(a)(3) of the Act. As the facts above summarized demonstrate, it was Fugate and Girton which took the action which precipitated the filing of Taylor's grievance by assigning Richardson and DeHart to the No. 3 and No. 4 positions at Fort Wayne. It was Fugate and Girton who made arrangements through the secretary of the Joint Conference Committee at Detroit to have any grievance arising as a result of its action handled under the grievance procedure set forth in the contract. Local 414 merely acquiesced in the procedure which Fugate and Girton decided upon to resolve any problems arising as a result of its assigning Richardson and DeHart to the No. 3 and No. 4 positions at Fort Wayne. And Local 414 also acquiesced in Richardson's and DeHart's assuming the No. 3 and No. 4 positions at Fort Wayne while Taylor's grievance was being processed. Thus, it was not Local 414 which was causing or attempting to cause Fugate and Girton to take discriminatory action against Richardson and DeHart; rather it was the other way around. Fugate and Girton was calling the shots and Local 414 was merely following its lead.

For the foregoing reasons I conclude that the Section 8(b)(2) allegations of the complaint must be dismissed.

In reaching this conclusion I am not unmindful of the fact that among the arguments made by representatives of Local 414 at the three grievance hearings involved in this case was the argument that Richardson and DeHart had refused to transfer to Local 414. However, I do not believe that this fact, either when considered alone or in light of the background evidence indicating that Local 414 in practice insisted that all union members permanently assigned to Fort Wayne should transfer their membership to Local 414, compels the conclusion that Local 414 utilized the grievance procedure under the contract in a manner which was violative of Section 8(b)(2) of the Act. The grievance proceedings in my opinion should be viewed as a whole, and the occasional arguments of overzealous union representatives in the course of these extended proceedings should not be regarded as determinative of the character of the proceedings as a whole. As found above, the grievance proceedings essentially were to determine a seniority controversy between Taylor and Fugate and Girton arising out of the latter's placing Taylor and the

other Fort Wayne drivers below Richardson and DeHart on the Fort Wayne terminal seniority list. Local 414, by continuing with the processing of such a seniority grievance, in my opinion, has not violated Section 8(b)(2) of the Act.

In so finding, I do not wish to imply that Richardson and DeHart have not been wronged by being deprived of work for 3 months while the grievance was pending before the Joint Conference Committee at Detroit. The record in this case indicates that Fugate and Girton, to serve its own economic interests, treated them as pawns, moving them about as it willed without regard to their seniority rights under the collective-bargaining contract. Under the contract, Richardson, as the No. 1 man on the Springfield seniority list, was entitled to continue to work at Springfield since there was work available there for truckaway drivers. DeHart was also entitled to work at Springfield, for part of the time, at least, depending upon the volume of work available in this 3-month period. Yet Fugate and Girton refused to put them to work until the Joint Conference Committee at Detroit specifically upheld their seniority standings at Springfield.

However, the remedy for this wrong which was done to Richardson and DeHart does not lie before the Labor Board. In my opinion, Richardson and DeHart have not only proceeded before the wrong tribunal, but also they have pursued the wrong party. However, whether Richardson and DeHart still have a remedy against Fugate and Girton under the grievance procedure of the contract or a contractual claim against it for violation of their seniority rights are questions outside the scope of this proceeding.

E. Conclusions concerning Local 414's alleged violation of Section 8(b)(1)(A)

The General Counsel contends that Local 414 violated Section 8(b)(1)(A) of the Act by failing to represent Richardson and DeHart fairly in its processing of Taylor's grievance. Essentially what the General Counsel relies upon is the fact that at both the September 26 Local Joint Committee hearing at Fort Wayne and the October 18 Joint Conference Committee hearing at Detroit, Local 414 presented the case strictly from the standpoint of the Fort Wayne based drivers, whose interests insofar as regular work at Fort Wayne for Richardson and DeHart was concerned were adverse to those of Richardson and DeHart, and did not afford Richardson and DeHart an opportunity to present their side of the matter.

It should be noted parenthetically, however, that neither the Local Joint Committee nor the Joint Conference Committee considered taking action in derogation of Richardson's and DeHart's seniority rights at Springfield, but merely to consider the rights of Richardson and DeHart at Fort Wayne. Neither Richardson nor DeHart were seeking permanent status in the No. 3 and No. 4 positions at Fort Wayne. DeHart so testified at the hearing in this case. And the record shows that Richardson at the November 8 subcommittee hearing specifically took the position that he was a Springfield driver. In view of this fact it is difficult to see how Richardson and DeHart were prejudicially affected by the action of these Committees.

In any event, Local 414 should not be held to have violated Section 8(b)(1)(A) by reason of its handling of the Taylor grievance because it was processed in accordance with the procedure specified in the series of identical contracts which make up the Automobile Carriers Truckaway Agreement. The Board has held that one of the objectives of Section 8(a)(5) of the Act is to encourage the parties to collective-bargaining agreements to establish machinery for the amicable resolution of their disputes. *Spielberg Manufacturing Company*, 112 NLRB 1080, 1082; *Denver-Chicago Trucking Company, Inc.*, 132 NLRB 1416, 1421.

In this case the parties have established, by means of uniform agreements between employers engaged in truckaway operations, and locals of the Teamsters representing their employees, a comprehensive grievance procedure for resolving disputes between the parties. It culminates in binding arbitration. Fugate and Girton has one contract with Local 414 setting forth procedure for resolving the grievances of its Fort Wayne based drivers. It has another contract with Springfield Local 654 covering its Springfield based drivers. The procedure set forth in these contracts appears to be fair and, in my opinion, adequately safeguards the rights of all concerned.

Under the procedure of the truckaway agreements, it is contemplated that a driver having a seniority grievance will process it through the local which represents the drivers at his base terminal. In this case Richardson's and DeHart's seniority rights arise out of the contract between Fugate and Girton and Local 654, which represents the drivers at the Springfield terminal. Under the contract Local 654 had the responsibility for protecting Richardson's and DeHart's seniority rights, as these rights exist strictly on a terminal basis and no driver can accumulate seniority simultaneously at two terminals. Seniority rights can be altered or affected only as permitted by the contract. No action was taken by anyone in this case in the

manner permitted by the contract to change Richardson's and DeHart's seniority rights at Springfield. To accept the General Counsel's contention that Local 414 acquired the responsibility to uphold Richardson's and DeHart's interest in the Taylor grievance proceeding is in effect to hold that two locals each simultaneously represent Richardson and DeHart and are obligated to look out for their interests. Not only does the scheme of representation embodied in the Act rule out such dual representation, but it is wholly unreasonable to expect a local which represents drivers having adverse interests to Richardson and DeHart to do an adequate job of protecting their rights.

Under all the circumstances, I conclude that under the procedure set forth in the truckaway agreements, Local 414 had no obligation to protect Richardson's and DeHart's interests in processing Taylor's grievance. This was the responsibility of Local 654, the Springfield Local, and its responsibility alone. It should be borne in mind that what gave rise to the filing of the charges in this case was Fugate and Girton's refusal, after September 26 when the Fort Wayne Local Joint Committee ruled that they had no right to regular work at Fort Wayne, to put Richardson and DeHart back to work at Springfield. Especially in these circumstances it is logical to hold that this seniority controversy should be settled under the auspices of Local 654, the Springfield local.

For the reasons stated above, I conclude that the grievance procedure set forth in the truckaway agreements affords a fair and adequate means of disposing of disputes between the employers and the various Teamsters locals,⁴ that under this procedure Local 414 was not obligated to represent the interests of Richardson and DeHart in the Taylor grievance proceedings. Accordingly, Local 414 should not be held to have violated Section 8(b)(1)(A) because of its failure to look out for their interests in the processing of Taylor's grievance.

CONCLUSION OF LAW

Chauffeurs, Teamsters and Helpers Local Union No. 414 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has not violated Section 8(b)(1)(A) and (2) of the Act, as alleged in the complaint.

RECOMMENDED ORDER

It is ordered that the complaint herein be, and it is hereby, dismissed.

⁴I recognize that Business Agent Feltis, representing Local 654 at the October 18 hearing at Detroit, took positions which were contrary to the interests of Richardson and DeHart and contrary to Local 654's duty as their bargaining representative. However, the fact that Feltis failed to fulfill his obligations in this regard does not alter the fact that the procedure, itself, was fair.

American Greetings Corporation and International Brotherhood of Pulp, Sulphite and Papermill Workers, AFL-CIO. Case No. 26-CA-1361. April 24, 1963

DECISION AND ORDER

On February 6, 1963, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. He also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of the complaint as to them. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.